
HOUSE BILL 3105

State of Washington

60th Legislature

2008 Regular Session

By Representatives Anderson, Dunshee, Priest, Santos, Sullivan, and McIntire

Read first time 01/22/08. Referred to Committee on Technology, Energy & Communications.

1 AN ACT Relating to establishing the Washington state department of
2 energy; amending RCW 43.17.010, 43.17.020, and 80.70.010; reenacting
3 and amending RCW 42.17.2401; adding a new section to chapter 41.06 RCW;
4 and adding a new chapter to Title 43 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that past global,
7 national, and regional energy market conditions and policy assumptions
8 that promoted a limited state government approach to the securing of
9 energy resources no longer exists and that state government, in
10 conjunction with the private sector, must take an active and
11 constructive role in securing energy resources.

12 (2) The legislature finds that energy market uncertainties threaten
13 to significantly undermine our state economy and citizen's prosperity
14 and that state government must be in the forefront of developing an
15 effective response to these uncertainties.

16 (3) The legislature finds that the state's energy security will be
17 improved by developing new electrical generation and transmission
18 facilities, by securing transportation fuel supplies, and by promoting
19 greater use of distributed generation.

1 (4) The legislature further finds a need to redefine and streamline
2 the state's role in energy-related regulatory and permitting functions
3 to better drive development and implementation of state energy policies
4 and investments that secure necessary energy resources for the state
5 and its citizens.

6 (5) To carry out this function, the legislature intends to
7 establish the Washington state department of energy.

8 (6) Additionally, the legislature intends to transfer certain
9 existing energy regulatory functions to the department to streamline
10 the process of securing new energy resources.

11 NEW SECTION. **Sec. 2.** The definitions in this section apply
12 throughout this chapter unless the context clearly requires otherwise.

13 (1) "Council" means the energy facility site evaluation council.

14 (2) "Department" means the Washington state department of energy.

15 (3) "Director" means the director of the Washington state
16 department of energy.

17 (4) "Division" means the energy policy division of the department
18 of community, trade, and economic development.

19 NEW SECTION. **Sec. 3.** There is created a department of state
20 government to be known as the Washington state department of energy.
21 The department is vested with all powers and duties transferred to it
22 under this chapter and such other powers and duties as may be
23 authorized by law.

24 NEW SECTION. **Sec. 4.** The executive head and appointing authority
25 of the department is the director. The director shall be appointed by
26 the governor, with the consent of the senate, and shall serve at the
27 pleasure of the governor. The director shall be paid a salary to be
28 fixed by the governor in accordance with RCW 43.03.040. If a vacancy
29 occurs in the position while the senate is not in session, the governor
30 shall make a temporary appointment until the next meeting of the
31 senate.

32 NEW SECTION. **Sec. 5.** It is the intent of the legislature wherever
33 possible to place the internal affairs of the department under the
34 control of the director in order that the director may institute

1 therein the flexible, alert, and intelligent management of its business
2 that changing contemporary circumstances require. Therefore, whenever
3 the director's authority is not specifically limited by law, the
4 director has complete charge and supervisory powers over the
5 department. The director may create such administrative structures as
6 the director considers appropriate, except as otherwise specified by
7 law. The director may employ such assistants and personnel as
8 necessary for the general administration of the department. This
9 employment shall be in accordance with the state civil service law,
10 chapter 41.06 RCW, except as otherwise provided.

11 NEW SECTION. **Sec. 6.** The department shall be subdivided into
12 three divisions, including the division of energy policy, energy
13 facility site evaluation, and energy resources procurement. Except as
14 otherwise specified or as federal requirements may otherwise require,
15 these divisions must be established and organized in accordance with
16 plans to be prepared by the director and approved by the governor. In
17 preparing such plans, the director shall endeavor to promote efficient
18 public management, to improve programs, and to take full advantage of
19 the economies, both fiscal and administrative, to be gained from the
20 consolidation of functions and agencies under this chapter.

21 NEW SECTION. **Sec. 7.** The director shall appoint a deputy
22 director, a department personnel director, and such assistant directors
23 as may be needed to administer the department. The deputy director
24 shall have charge and general supervision of the department in the
25 absence or disability of the director and, in case of a vacancy in the
26 office of director, shall continue in charge of the department until a
27 successor is appointed and qualified, or until the governor appoints an
28 acting director.

29 NEW SECTION. **Sec. 8.** Any power or duty vested in or transferred
30 to the director by law or executive order may be delegated by the
31 director to the deputy director or to any other assistant or
32 subordinate; but the director shall be responsible for the official
33 acts of the officers and employees of the department.

1 NEW SECTION. **Sec. 9.** The director may appoint such advisory
2 committees or councils as may be required by any federal legislation as
3 a condition to the receipt of federal funds by the department. The
4 director may also appoint statewide committees or councils on such
5 subject matters as are or come within the department's
6 responsibilities. The statewide committees and councils shall have
7 representation from both major political parties and shall have
8 substantial consumer representation. The committees or councils shall
9 be constituted as required by federal law or as the director may
10 determine. The members of the committees or councils shall hold office
11 as follows: One-third to serve one year; one-third to serve two years;
12 and one-third to serve three years. Upon expiration of the original
13 terms, subsequent appointments shall be for three years except in the
14 case of a vacancy, in which event appointment shall be only for the
15 remainder of the unexpired term for which the vacancy occurs. No
16 member may serve more than two consecutive terms.

17 Members of such state advisory committees or councils may be paid
18 their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

19 NEW SECTION. **Sec. 10.** In furtherance of the policy of the state
20 to cooperate with the federal government in all of the programs under
21 the jurisdiction of the department, such rules as may become necessary
22 to entitle the state to participate in federal funds may be adopted,
23 unless expressly prohibited by law. Any internal reorganization
24 carried out under the terms of this chapter shall meet federal
25 requirements that are a necessary condition to state receipt of federal
26 funds. Any section or provision of law dealing with the department
27 that may be susceptible to more than one construction shall be
28 interpreted in favor of the construction most likely to comply with
29 federal laws entitling this state to receive federal funds for the
30 various programs of the department. If any law dealing with the
31 department is ruled to be in conflict with federal requirements that
32 are a prescribed condition of the allocation of federal funds to the
33 state, or to any departments or agencies thereof, the conflicting part
34 is declared to be inoperative solely to the extent of the conflict.

35 NEW SECTION. **Sec. 11.** A new section is added to chapter 41.06 RCW
36 to read as follows:

1 In addition to the exemptions under RCW 41.06.070, the provisions
2 of this chapter shall not apply in the department to the director, the
3 director's personal secretary, the deputy director, all division
4 directors and assistant directors, and one confidential secretary for
5 each of these officers.

6 **Sec. 12.** RCW 43.17.010 and 2007 c 341 s 46 are each amended to
7 read as follows:

8 There shall be departments of the state government which shall be
9 known as (1) the department of social and health services, (2) the
10 department of ecology, (3) the department of labor and industries, (4)
11 the department of agriculture, (5) the department of fish and wildlife,
12 (6) the department of transportation, (7) the department of licensing,
13 (8) the department of general administration, (9) the department of
14 community, trade, and economic development, (10) the department of
15 veterans affairs, (11) the department of revenue, (12) the department
16 of retirement systems, (13) the department of corrections, (14) the
17 department of health, (15) the department of financial institutions,
18 (16) the department of archaeology and historic preservation, (17) the
19 department of early learning, (~~and~~) (18) the Puget Sound partnership,
20 and (19) the department of energy, which shall be charged with the
21 execution, enforcement, and administration of such laws, and invested
22 with such powers and required to perform such duties, as the
23 legislature may provide.

24 **Sec. 13.** RCW 43.17.020 and 2007 c 341 s 47 are each amended to
25 read as follows:

26 There shall be a chief executive officer of each department to be
27 known as: (1) The secretary of social and health services, (2) the
28 director of ecology, (3) the director of labor and industries, (4) the
29 director of agriculture, (5) the director of fish and wildlife, (6) the
30 secretary of transportation, (7) the director of licensing, (8) the
31 director of general administration, (9) the director of community,
32 trade, and economic development, (10) the director of veterans affairs,
33 (11) the director of revenue, (12) the director of retirement systems,
34 (13) the secretary of corrections, (14) the secretary of health, (15)
35 the director of financial institutions, (16) the director of the

1 department of archaeology and historic preservation, (17) the director
2 of early learning, (~~and~~) (18) the executive director of the Puget
3 Sound partnership, and (19) the director of energy.

4 Such officers, except the director of fish and wildlife, shall be
5 appointed by the governor, with the consent of the senate, and hold
6 office at the pleasure of the governor. The director of fish and
7 wildlife shall be appointed by the fish and wildlife commission as
8 prescribed by RCW 77.04.055.

9 **Sec. 14.** RCW 42.17.2401 and 2007 c 341 s 48, 2007 c 241 s 2, and
10 2007 c 15 s 1 are each reenacted and amended to read as follows:

11 For the purposes of RCW 42.17.240, the term "executive state
12 officer" includes:

- 13 (1) The chief administrative law judge, the director of
14 agriculture, the administrator of the Washington basic health plan, the
15 director of the department of services for the blind, the director of
16 the state system of community and technical colleges, the director of
17 community, trade, and economic development, the secretary of
18 corrections, the director of early learning, the director of ecology,
19 the commissioner of employment security, the chair of the energy
20 facility site evaluation council, the secretary of the state finance
21 committee, the director of financial management, the director of fish
22 and wildlife, the executive secretary of the forest practices appeals
23 board, the director of the gambling commission, the director of general
24 administration, the secretary of health, the administrator of the
25 Washington state health care authority, the executive secretary of the
26 health care facilities authority, the executive secretary of the higher
27 education facilities authority, the executive secretary of the horse
28 racing commission, the executive secretary of the human rights
29 commission, the executive secretary of the indeterminate sentence
30 review board, the director of the department of information services,
31 the executive director of the state investment board, the director of
32 labor and industries, the director of licensing, the director of the
33 lottery commission, the director of the office of minority and women's
34 business enterprises, the director of parks and recreation, the
35 director of personnel, the executive director of the public disclosure
36 commission, the executive director of the Puget Sound partnership, the
37 director of the recreation and conservation office, the director of

1 retirement systems, the director of revenue, the secretary of social
2 and health services, the chief of the Washington state patrol, the
3 executive secretary of the board of tax appeals, the secretary of
4 transportation, the secretary of the utilities and transportation
5 commission, the director of veterans affairs, the president of each of
6 the regional and state universities and the president of The Evergreen
7 State College, and each district and each campus president of each
8 state community college, and the director of energy;

9 (2) Each professional staff member of the office of the governor;

10 (3) Each professional staff member of the legislature; and

11 (4) Central Washington University board of trustees, the boards of
12 trustees of each community college and each technical college, each
13 member of the state board for community and technical colleges, state
14 convention and trade center board of directors, committee for deferred
15 compensation, Eastern Washington University board of trustees,
16 Washington economic development finance authority, The Evergreen State
17 College board of trustees, executive ethics board, forest practices
18 appeals board, forest practices board, gambling commission, life
19 sciences discovery fund authority board of trustees, Washington health
20 care facilities authority, each member of the Washington health
21 services commission, higher education coordinating board, higher
22 education facilities authority, horse racing commission, state housing
23 finance commission, human rights commission, indeterminate sentence
24 review board, board of industrial insurance appeals, information
25 services board, (~~recreation and conservation funding board,~~) state
26 investment board, commission on judicial conduct, legislative ethics
27 board, liquor control board, lottery commission, marine oversight
28 board, Pacific Northwest electric power and conservation planning
29 council, parks and recreation commission, board of pilotage
30 commissioners, pollution control hearings board, public disclosure
31 commission, public pension commission, shorelines (~~hearing[s]~~)
32 hearings board, public employees' benefits board, recreation and
33 conservation funding board, salmon recovery funding board, board of tax
34 appeals, transportation commission, University of Washington board of
35 regents, utilities and transportation commission, Washington state
36 maritime commission, Washington personnel resources board, Washington
37 public power supply system executive board, Washington State University

1 board of regents, Western Washington University board of trustees, and
2 fish and wildlife commission.

3 NEW SECTION. **Sec. 15.** The department shall contract with the
4 Washington State University energy extension to provide research
5 services as deemed necessary by the director.

6 NEW SECTION. **Sec. 16.** (1) All powers, duties, and functions of
7 the department of community, trade, and economic development pertaining
8 to chapters 43.21F, 43.21G, and 19.29A RCW and RCW 43.330.904 are
9 transferred to the department. All references to the director or the
10 department of community, trade, and economic development in the Revised
11 Code of Washington shall be construed to mean the director or the
12 department when referring to the functions transferred in this section.

13 (2)(a) All reports, documents, surveys, books, records, files,
14 papers, or written material in the possession of the department of
15 community, trade, and economic development pertaining to the powers,
16 functions, and duties transferred shall be delivered to the custody of
17 the department. All cabinets, furniture, office equipment, motor
18 vehicles, and other tangible property employed by the department of
19 community, trade, and economic development in carrying out the powers,
20 functions, and duties transferred shall be made available to the
21 department. All funds, credits, or other assets held in connection
22 with the powers, functions, and duties transferred shall be assigned to
23 the department.

24 (b) Any appropriations made to the department of community, trade,
25 and economic development for carrying out the powers, functions, and
26 duties transferred shall, on the effective date of this section, be
27 transferred and credited to the department.

28 (c) Whenever any question arises as to the transfer of any
29 personnel, funds, books, documents, records, papers, files, equipment,
30 or other tangible property used or held in the exercise of the powers
31 and the performance of the duties and functions transferred, the
32 director of financial management shall make a determination as to the
33 proper allocation and certify the same to the state agencies concerned.

34 (3) All employees of the department of community, trade, and
35 economic development engaged in performing the powers, functions, and
36 duties transferred are transferred to the jurisdiction of the

1 department. All employees classified under chapter 41.06 RCW, the
2 state civil service law, are assigned to the department to perform
3 their usual duties upon the same terms as formerly, without any loss of
4 rights, subject to any action that may be appropriate thereafter in
5 accordance with the laws and rules governing state civil service.

6 (4) All rules and all pending business before the department of
7 community, trade, and economic development pertaining to the powers,
8 functions, and duties transferred shall be continued and acted upon by
9 the department. All existing contracts and obligations shall remain in
10 full force and shall be performed by the department.

11 (5) The transfer of the powers, duties, functions, and personnel of
12 the department of community, trade, and economic development shall not
13 affect the validity of any act performed before the effective date of
14 this section.

15 (6) If apportionments of budgeted funds are required because of the
16 transfers directed by this section, the director of financial
17 management shall certify the apportionments to the agencies affected,
18 the state auditor, and the state treasurer. Each of these shall make
19 the appropriate transfer and adjustments in funds and appropriation
20 accounts and equipment records in accordance with the certification.

21 (7) Nothing contained in this section may be construed to alter any
22 existing collective bargaining unit or the provisions of any existing
23 collective bargaining agreement until the agreement has expired or
24 until the bargaining unit has been modified by action of the public
25 employment relations commission as provided by law.

26 NEW SECTION. **Sec. 17.** (1) The energy facility site evaluation
27 council is hereby abolished and its powers, duties, and functions are
28 hereby transferred to the department. All references to the chair of
29 the energy facility site evaluation council or the energy facility site
30 evaluation council in the Revised Code of Washington shall be construed
31 to mean the director or the department.

32 (2)(a) All reports, documents, surveys, books, records, files,
33 papers, or written material in the possession of the energy facility
34 site evaluation council shall be delivered to the custody of the
35 department. All cabinets, furniture, office equipment, motor vehicles,
36 and other tangible property employed by the energy facility site

1 evaluation council shall be made available to the department. All
2 funds, credits, or other assets held by the energy facility site
3 evaluation council shall be assigned to the department.

4 (b) Any appropriations made to the energy facility site evaluation
5 council shall, on the effective date of this section, be transferred
6 and credited to the department.

7 (c) If any question arises as to the transfer of any personnel,
8 funds, books, documents, records, papers, files, equipment, or other
9 tangible property used or held in the exercise of the powers and the
10 performance of the duties and functions transferred, the director of
11 financial management shall make a determination as to the proper
12 allocation and certify the same to the state agencies concerned.

13 (3) All employees of the energy facility site evaluation council
14 are transferred to the jurisdiction of the department. All employees
15 classified under chapter 41.06 RCW, the state civil service law, are
16 assigned to the department to perform their usual duties upon the same
17 terms as formerly, without any loss of rights, subject to any action
18 that may be appropriate thereafter in accordance with the laws and
19 rules governing state civil service.

20 (4) All rules and all pending business before the energy facility
21 site evaluation council shall be continued and acted upon by the
22 department. All existing contracts and obligations shall remain in
23 full force and shall be performed by the department.

24 (5) The transfer of the powers, duties, functions, and personnel of
25 the energy facility site evaluation council shall not affect the
26 validity of any act performed before the effective date of this
27 section.

28 (6) If apportionments of budgeted funds are required because of the
29 transfers directed by this section, the director of financial
30 management shall certify the apportionments to the agencies affected,
31 the state auditor, and the state treasurer. Each of these shall make
32 the appropriate transfer and adjustments in funds and appropriation
33 accounts and equipment records in accordance with the certification.

34 (7) Nothing contained in this section may be construed to alter any
35 existing collective bargaining unit or the provisions of any existing
36 collective bargaining agreement until the agreement has expired or
37 until the bargaining unit has been modified by action of the public
38 employment relations commission as provided by law.

1 **Sec. 18.** RCW 80.70.010 and 2004 c 224 s 1 are each amended to read
2 as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Applicant" has the meaning provided in RCW 80.50.020 and
6 includes an applicant for a permit for a fossil-fueled thermal electric
7 generation facility subject to RCW 70.94.152 and 80.70.020(1) (b) or
8 (d).

9 (2) "Authority" means any air pollution control agency whose
10 jurisdictional boundaries are coextensive with the boundaries of one or
11 more counties.

12 (3) "Carbon credit" means a verified reduction in carbon dioxide or
13 carbon dioxide equivalents that is registered with a state, national,
14 or international trading authority or exchange that has been recognized
15 by the council.

16 (4) "Carbon dioxide equivalents" means a metric measure used to
17 compare the emissions from various greenhouse gases based upon their
18 global warming potential.

19 (5) "Cogeneration credit" means the carbon dioxide emissions that
20 the council, department, or authority, as appropriate, estimates would
21 be produced on an annual basis by a stand-alone industrial and
22 commercial facility equivalent in operating characteristics and output
23 to the industrial or commercial heating or cooling process component of
24 the cogeneration plant.

25 (6) "Cogeneration plant" means a fossil-fueled thermal power plant
26 in which the heat or steam is also used for industrial or commercial
27 heating or cooling purposes and that meets federal energy regulatory
28 commission standards for qualifying facilities under the public utility
29 regulatory policies act of 1978.

30 (7) "Commercial operation" means the date that the first
31 electricity produced by a facility is delivered for commercial sale to
32 the power grid.

33 (8) "Council" means the energy facility site evaluation council
34 created by RCW 80.50.030.

35 (9) "Department" means the department of (~~ecology~~) energy.

36 (10) "Fossil fuel" means natural gas, petroleum, coal, or any form
37 of solid, liquid, or gaseous fuel derived from such material to produce
38 heat for the generation of electricity.

1 (11) "Mitigation plan" means a proposal that includes the process
2 or means to achieve carbon dioxide mitigation through use of mitigation
3 projects or carbon credits.

4 (12) "Mitigation project" means one or more of the following:

5 (a) Projects or actions that are implemented by the certificate
6 holder or order of approval holder, directly or through its agent, or
7 by an independent qualified organization to mitigate the emission of
8 carbon dioxide produced by the fossil-fueled thermal electric
9 generation facility. This term includes but is not limited to the use
10 of, energy efficiency measures, clean and efficient transportation
11 measures, qualified alternative energy resources, demand side
12 management of electricity consumption, and carbon sequestration
13 programs;

14 (b) Direct application of combined heat and power (cogeneration);

15 (c) Verified carbon credits traded on a recognized trading
16 authority or exchange; or

17 (d) Enforceable and permanent reductions in carbon dioxide or
18 carbon dioxide equivalents through process change, equipment shutdown,
19 or other activities under the control of the applicant and approved as
20 part of a carbon dioxide mitigation plan.

21 (13) "Order of approval" means an order issued under RCW 70.94.152
22 with respect to a fossil-fueled thermal electric generation facility
23 subject to RCW 80.70.020(1) (b) or (d).

24 (14) "Permanent" means that emission reductions used to offset
25 emission increases are assured for the life of the corresponding
26 increase, whether unlimited or limited in duration.

27 (15) "Qualified alternative energy resource" has the same meaning
28 as in RCW 19.29A.090.

29 (16) "Station generating capability" means the maximum load a
30 generator can sustain over a given period of time without exceeding
31 design limits, and measured using maximum continuous electric
32 generation capacity, less net auxiliary load, at average ambient
33 temperature and barometric pressure.

34 (17) "Total carbon dioxide emissions" means:

35 (a) For a fossil-fueled thermal electric generation facility
36 described under RCW 80.70.020(1) (a) and (b), the amount of carbon
37 dioxide emitted over a thirty-year period based on the manufacturer's
38 or designer's guaranteed total net station generating capability, new

1 equipment heat rate, an assumed sixty percent capacity factor for
2 facilities under the council's jurisdiction or sixty percent of the
3 operational limitations on facilities subject to an order of approval,
4 and taking into account any enforceable limitations on operational
5 hours or fuel types and use; and

6 (b) For a fossil-fueled thermal electric generation facility
7 described under RCW 80.70.020(1) (c) and (d), the amount of carbon
8 dioxide emitted over a thirty-year period based on the proposed
9 increase in the amount of electrical output of the facility that
10 exceeds the station generation capability of the facility prior to the
11 applicant applying for certification or an order of approval pursuant
12 to RCW 80.70.020(1) (c) and (d), new equipment heat rate, an assumed
13 sixty percent capacity factor for facilities under the council's
14 jurisdiction or sixty percent of the operational limitations on
15 facilities subject to an order of approval, and taking into account any
16 enforceable limitations on operational hours or fuel types and use.

17 NEW SECTION. **Sec. 19.** Sections 1 through 10 and 15 through 17 of
18 this act constitute a new chapter in Title 43 RCW.

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